

AMENDED IN ASSEMBLY MARCH 27, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 690

Introduced by Assembly Member Pacheco

February 19, 2003

An act to amend Sections 488.455 and 700.140 of the Code of Civil Procedure, relating to garnishment.

LEGISLATIVE COUNSEL'S DIGEST

AB 690, as amended, Pacheco. Garnishment: execution and attachment liens.

Existing law provides that, in order to levy an execution lien or attachment lien upon a deposit account, the levying officer shall personally serve a copy of the writ and a notice of levy on the financial institution with which the deposit account is maintained.

This bill would provide for an alternative method of ~~levy attachment~~ by the levying officer, by ~~personal delivery or mail service~~ of the writ and notice of ~~levy to attachment~~ on a centralized location designated by the ~~bank or savings and loan association~~ *financial institution*. The bill would also provide that if the writ is received at the designated central location, it shall apply to all ~~deposits and credits and personal property deposit accounts~~ held by the ~~bank or savings and loan association~~ *financial institution* regardless of the location of that property.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 488.455 of the Code of Civil Procedure is amended to read:

488.455. (a) Subject to Section 488.465, to attach a deposit account, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the financial institution with which the deposit account is maintained, or shall personally ~~deliver or mail~~ serve the writ of ~~execution attachment~~ and notice of ~~levy attachment to~~ on a centralized location designated by the ~~bank or savings and loan association financial institution~~. If the writ of ~~execution attachment~~ is received at the designated central location, it shall apply to all ~~deposits and credits and personal property deposit accounts~~ held by the ~~bank or savings and loan association financial institution~~ regardless of the location of that property. The attachment lien reaches only amounts in the deposit account at the time of service on the financial institution, including any item in the deposit account that is in the process of being collected, unless the item is returned unpaid to the financial institution.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of attachment and a notice of attachment on any third person in whose name the deposit account stands.

(c) During the time the attachment lien is in effect, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to an amount that is less than the amount attached. For the purposes of this subdivision, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

(d) During the time the attachment lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the attachment.

(2) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account if the nonpayment is pursuant to the requirements of subdivision (c).

1 (3) Refusal to pay a withdrawal from the deposit account if the
2 refusal is pursuant to the requirements of subdivision (c).

3 (e) When the amount attached pursuant to this section is paid
4 to the levying officer, the attachment lien on the attached deposit
5 account terminates.

6 (f) For the purposes of this section, neither of the following is
7 a third person in whose name the deposit account stands:

8 (1) A person who is only a person named as the beneficiary of
9 a Totten trust account.

10 (2) A person who is only a payee designated in a pay-on-death
11 provision in an account pursuant to Section 18318.5 of the
12 Financial Code or Section 5140 of the Probate Code, or other
13 similar provision.

14 (g) When a deposit account has been attached, as an alternative
15 to paying the amount of the deposit account that is attached to the
16 levying officer as required by Section 488.600, the financial
17 institution may continue to hold the deposit account until the
18 deposit account is levied upon after judgment in the action or is
19 earlier released, the deposit account to be held in one of the
20 following manners:

21 (1) If the entire deposit account is attached, the financial
22 institution may hold the deposit account on the terms applicable
23 before the attachment, subject to the requirements of subdivision
24 (c).

25 (2) If less than the entire deposit account is attached:

26 (A) With the consent of the defendant, and any third person in
27 whose name the deposit account stands, the financial institution
28 may hold in the deposit account on the same terms an amount
29 larger than the attached amount as necessary to avoid a penalty or
30 a reduction of the rate of interest.

31 (B) If the defendant, and any third person in whose name the
32 deposit account stands, do not consent as provided in subparagraph
33 (A), the financial institution may hold the attached amount on the
34 same terms affecting the deposit account before the attachment,
35 subject to the requirements of subdivision (c).

36 (3) The financial institution may hold the attached deposit
37 account in any other manner agreed upon by the plaintiff, the
38 defendant, and any third person in whose name the deposit account
39 stands.

(h) Subdivision (g) does not prevent a financial institution that is holding an attached deposit account as provided in subdivision (g) from paying the attached amount to the levying officer before the time the financial institution otherwise is required to pay the amount under subdivision (g).

SEC. 2. Section 700.140 of the Code of Civil Procedure is amended to read:

700.140. (a) Subject to Section 700.160, to levy upon a deposit account, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the deposit account is maintained, or shall personally ~~deliver or mail~~ serve the writ of execution and notice of levy to a centralized location designated by the ~~bank or savings and loan association~~ *financial institution*. If the writ of execution is received at the designated central location, it shall apply to all ~~deposits and credits and personal property~~ *deposit accounts* held by the ~~bank or savings and loan association~~ *financial institution* regardless of the location of that property. The execution lien reaches only amounts in the deposit account at the time of service on the financial institution, including any item in the deposit account that is in the process of being collected, unless the item is returned unpaid to the financial institution.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on any third person in whose name the deposit account stands. Service shall be made personally or by mail.

(c) During the time the execution lien is in effect, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to an amount that is less than the amount levied upon. For the purposes of this subdivision, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

(d) During the time the execution lien is in effect, the financial institution is not liable to any person for any of the following:

- (1) Performance of the duties of a garnishee under the levy.

1 (2) Nonpayment of a check or other order for the payment of
2 money drawn or presented against the deposit account if the
3 nonpayment is pursuant to the requirements of subdivision (c).

4 (3) Refusal to pay a withdrawal from the deposit account if the
5 refusal is pursuant to the requirements of subdivision (c).

6 (e) When the amount levied upon pursuant to this section is
7 paid to the levying officer, the execution lien on the deposit
8 account levied upon terminates.

9 (f) For the purposes of this section, neither of the following is
10 a third person in whose name the deposit account stands:

11 (1) A person who is only a person named as the beneficiary of
12 a Totten trust account.

13 (2) A person who is only a payee designated in a pay-on-death
14 provision in an account pursuant to Section 18318.5 of the
15 Financial Code or Section 5140 of the Probate Code, or other
16 similar provision.

